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ABSTRACT

A discussion of the role of court interpreters looks at the need for competent interpreters, the kinds and demands of court interpretation, and New Jersey's leadership in recognizing the necessity for court interpretation. Demographic and legal reasons for providing interpreters in today's courts are outlined. Three court interpreting functions (simultaneous, consecutive, and summary) are described, and the skill demands they make on the interpreters are noted. General skills needed for cross-cultural interpretation are also analyzed. The initiative taken by New Jersey's judicial system to develop a training and certification system is described. General lack of monitoring of the profession is blamed in part for the haphazard way in which the profession has developed. Information about the deficiencies in court interpreter qualifications and performance drawn from New Jersey's task force research are discussed. Other aspects of court interpreting considered include: (1) the employment patterns, compensation, and other duties of interpreters, including clerical work and language-family interpretation; (2) the source of the decision to hire an interpreter; and (3) the conditions under which this decision is made. (MSE)

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COURT INTERPRETATION: THE NEED FOR A CERTIFICATION PROCESS

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Why court interpreters ?

At one level, the function of courts is investigative--to ascertain what happened in a given situation. Clearly this function cannot be discharged if one or more witnesses are unable to communicate to the court. But apart from the integrity of the fact-finding process, broader issues are posed, such as questions of human rights. It is a long tradition in Western law, and indeed in the legal codes of many other societies, that all persons should have equal access to the courts and that a person has a right to be informed of the nature and cause of a criminal accusation. In this country, the right of equal access is embodied in the 14th Amendment to the U.S Constitution. The Sixth Amendment also enshrines the right to be confronted with the state's witnesses, to be present during the proceedings, and to have the assistance of counsel. This has quite wide-ranging implications when non-English speakers are involved. The right to confront adverse witnesses cannot be exercised if one doesn't know what they are saying. The right to be present at all crucial stages of the proceedings means more than mere bodily presence. The 'presence' must be conscious, that is to say the person must be aware of what is going on.

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Some rights go beyond the confines of the courtroom itself; for the right of access to counsel to have any meaning, the defendant must have effective communication with counsel during pre-trial preparation as well as throughout the trial. The defendant must understand the counsel, and the counsel must understand his client. Casting the constitutional net even wider, one can include proper access to the kinds of services supplied by court support personnel such as police, probation officers, clerks, bailiffs, receptionists and so forth. Though these do not fall within the topic of this paper, they pose questons that can be just as troubling as those presented within the courtroom itself. For instance, in dealings with the police, many Hispanics are labeled as having an alias when what has happened is merely that confusion has arisen between one or other of the Hispanic's apellidos. In the probation phase, it is not unknown for prisoners to have their probation privileges revoked for noncompliance with details of the conditions, very often due to lack of an understanding as to what those conditions were. Probation Officers sometimes rely on prisoners to interpret when conducting interviews in county jails. The results of such an interview are written up in a report, and it is notoriously difficult to catch and correct errors in such documents. Considerations such as these establish the need for interpretation services of the first quality in all aspects of the judicial system.

Within the confines of the courtroom itself, the need for good interpretation is confirmed. It is obviously in the interest of the courts that the legal process function smoothly and that interpretation be as efficient and unobtrusive as possible; there should not be interruptions of the proceedings in order for interpretations to take place, and it is vital to obviate any bad interpretation or confusion which might provide grounds for a retrial. Add to these the wider political concerns of promoting public confidence in the judicial process, and it can be seen why at least some states have recently started to take the question of court interpretation seriously.

One of these states is New Jersey, a state which provides a useful paradigm and case history for the nation as a whole. The state of New Jersey has a long tradition of languages other than English; in fact at times in the nineteenth century German occupied the position of a quasi-official alternative to English. Each census since 1900 has reported that English was not the mother tongue for at least 10% of the population. The 1980 census estimated that at least 16% of persons five years old and over speak a language other than English at home. In addition to that, one would have to count in the illegal immigrants, many of whom were probably missed by the census. The presence of linguistic minorities varies considerably throughout the state. Some areas, principally though not exclusively in the northwest and south-east of the state, have few non-English speakers. Others have non-English speaking populations comprising more than 50%. There is quite a

diversity in regard to the languages spoken. Apart from Spanish, significant numbers of people speak Italian, Polish, German and Portuguese. In all, 21 languages other than English are spoken by 5,000 or more persons. In the average month about 7,000 (8%) of all court proceedings involve the need for a foreign language interpreter.

What types of personnel are needed to service the needs of this diverse community ?

Court Interpreters and Legal Translators

There are 3 different functions in court interpreting: simultaneous, consecutive and summary. Clearly the simultaneous mode is very challenging, since the rendering must be delivered contemporaneously with the oration to be interpreted. Thus there is very little time to reflect on the linguistic choices which are needed for a precise rendering. There is no time to consult a colleague or dictionary, no time to dwell on any possible ambiguities in the source or target. The interpreter gets no chance to polish or perfect his version. He must control a large number of language registers, from the informal, perhaps even slang of a witness or defendant, to the sometimes abstract or punctilious utterances of judge or counsel.

The consecutive mode is somewhat more common but only slightly less taxing. It requires all the skills of the simultaneous format, except that the interpretation is provided during pauses in the proceedings. This mode tends to be used when someone is giving evidence to the court, simultaneous being

preferred at the defense counsel table, where the proceedings are being explained to defendant. Incidentally, the consecutive is the mode specified by Congress in the 1978 Court Interpreters Act. A third required skill for interpreters is the ability to give summaries or condensed versions of the testimony that has been given. This is commonly found in civil cases, where precise word-for-word equivalence may not be considered necessary. Apart from interpreting, the court interpreter is also occasionally called on to perform at-sight translations of written documents.

Clearly, as can be seen from the job description, it's not enough for the interpreter to be bilingual. He (and I use the masculine pronoun in its generic sense, since a majority of court interpreters are women) must know both source and target language standards as well as dialects, socially-determined registers, and specialized terminology in a broad range of subject areas.

The interpreter must have mastered the characteristics and peculiarities of legal terminology, as well as be aware of general legal procedures. The general level of discourse used in court, apart from the specifically legal terminology, tends to be of a somewhat formal register--some people have compared it to the language of the university lecture hall, so the interpreter must have the vocabulary and general knowledge (in both languages) appropriate to such levels. Charrow and Charrow, who measured the comprehension of judges' instructions to English

speaking jurors, found that the average juror understood only slightly more than half of the essential ideas. Eugene Briere found that many arrested people did not know enough English to understand the reading of the Miranda rights. I should stress that this applied to native speakers of English ! Briere claimed that the Miranda Reading requires a 13th grade level of aural comprehension for 100% comprehension.

In addition to full command of both languages, the interpreter should also know about legal differences between target country and source country. Many concepts do not exist in both cultures. One example of this is that of notary public. In some Hispanic countries the notario publico has much wider duties than his counterpart in the U.S. In addition, the interpreter should be able to apply some basic interpreting techniques such as use of first person. Good interpreting must be both accurate and comprehensive: this includes such things as retaining the emphasis of the speaker, grasping and conveying his meaning, relating all information, and following a middle course between excessive literalness on the one side and excessive accommodation to the target language on the other.

The New Jersey Experience

In 1982 the Supreme Court of the State of New Jersey set up a Task Force to investigate the current status and projected needs for court interpreter and translator services in the state. The report of this Task Force showed that the situation was unsatisfactory in a wide range of aspects of the

judicial system. The Task Force found that persons providing court interpreting services generally did not possess requisite skills and training and that existing procedures for establishing qualifications were inadequate. The Task Force recommended that the Supreme Court should prescribe the qualifications of persons who interpret or translate in or for the courts and set up a Board of Interpreters to certify those aspiring to become court interpreters. THe Task Force looked to New Jersey institutions of higher education to participate in the training end of this process.

This undertaking been proceeding slowly since then; we New Jersey does not yet have a certification program, but a lot of the necessary elements are being put in place. There is now a screening test which all applicants must take, already hired staff being encouraged to do so without prejudice. Existing staff are encouraged to upgrade their skills, and receive release time for this purpose. In the case of Spanish, it is hoped that a supply of newly-trained personnel will be forthcoming in the future from the programs developed at institutions such as Montclair State College, Jersey City State College, and William Paterson College.

So the court interpreter has heavy responsibilities. Yet very often he is the only speaker of the source language present, with no one there to correct or help him. This is bad enough, but at least when he is interpreting the defendant or witness to the court, judge, jury, or attorneys may notice any errors he may commit. But there is no control over the

quality of the simultaneous interpretation, often whispered by the interpreter in the defendant's ear. And the language of all court records is English. No record is kept of what was said in the non-English language. What the interpreter says is what is recorded in the case of all utterances from defendant or witness. Indeed, in a case in Massachusetts it was ruled that a juror who understands the source language must disregard it and count as evidence only what is supplied in English by the interpreter, even when he considers the interpretation to be flawed. For this and for other reasons, ideally one could argue for the need to have two court interpreters for each case, but there is no realistic hope of this transpiring at this time. Generally, the lack of monitoring within the court is paralleled throughout the profession as a whole. There is little supervision of interpreters as a body, no hierarchy of responsibility, no career structure, and inadequate procedures for dealing with the incompetent.

Unfortunately, perhaps because of the haphazard way in which the profession has developed and continues to operate, serious questions of ethics and professionalism can arise. Thus an interpreter may take improper initiatives such as volunteering information above and beyond what he has heard from a witness, in a misguided desire to assist either the defendant or the court in general. He may "simplify" or "explain" or "add to", even to the degree of prompting witnesses. Sometimes he may offer gratuitous legal advice to the defendant. Indeed, one hears the complaint that the interpreter is often expected by the

Prosecution to aid in convincing the defendant to accept a plea bargain. Often, since both interpreter and defendant share the same culture, a certain bond grows between them, since one is articulating the thoughts of the other. This can even make a defendant or witness offer information, perhaps self-incriminating, that he might otherwise not have disclosed to the court. It is of course the duty of the interpreter to render this to the court.

What kind of people have been doing this kind of work in New Jersey and how well have they been doing it ? Quite a lot of information was gathered during the research for the Task Force and subsequently, so we do have a fairly good picture of the personnel involved. Educationally, they had an average of 13 or 14 years education. 31% had no education beyond the high school level, and some of these had not completed high school. Only 12% of New Jersey interpreters have received training. The major qualification for the job tends to be experience. The quality of experience, however, is very uneven, and can even be damaging, since it reinforces substandard practices.

As an aside, let me stress that these deficiencies are fully recognized by most New Jersey court interpreters. They will be the first to admit that their profession needs further training and professionalization, and they are enthusiastic participants in the training opportunities that have been provided. I suspect that the situation is New Jersey is considerably better than it is in most other states. Indeed the fact that the Task Force was set up, and the comprehensive

nature of its report, shows that the State takes the question of language access to the courts very seriously, perhaps more seriously than many other states.

To return to the information we have about the people who do court interpreting in New Jersey. As regards competence, there are grounds for disquiet. In one study, three experts in Spanish-English court interpreting evaluated the quality of interpreting of 42 persons in the trial courts. Only seven of these met or exceeded what was defined as a minimally acceptable level of proficiency. Some of the interpreters whose performance was judged most deficient were actually official, full-time interpreters. In another study, the investigators judged that perhaps half of the cases reviewed gave evidence of one or more interpreting errors that actually or potentially affected the trial outcome. Another statistic--of 116 applicants who took the screening test, just 7 passed.

How are such people chosen ? Some counties administer an exam to aspiring full-time interpreters. But much of the work is done by casual, per diem staff, and these people usually come from agencies, with no quality control save the agencies' recommendation. Incidentally, in the Task Force's opinion, there is no relation between skill and status. In other words, full-time, official interpreters are no better than part-timers, and neither is necessarily better than the amateurs, that is to say the bilingual court employees who are called on to interpret on an ad hoc basis.

Given that we agree that this is demanding and important work, how are salary and other benefits ? In 1984 salaries for full-time court interpreters in New Jersey ranged from $9.500 to $17.131, and the average was $11,851. The low end of this range is the county court interpreter. Payment for per diem staff also varies, $50-75 per day. The hourly rate in 1984 could go as low as $10. The top rates in New Jersey are somewhat lower than pay in the Federal system. Generally, there remains an attitude that interpretation is a clerical, not a professional skill. It is seen as facilitating the court, not as a service to the entire community, especially those speakers of non-English languages. Interpreters are sometimes asked to do clerical non-language work, or even work in languages in which they are not competent--the problem of 'language-family' interpretation, e.g. Spanish for Italian, Russian for Polish.

Who decides when an interpreter's services are needed ? When a request for an interpreter is made, it is the judge's decision as to whether this is bona fide. Some judges err on the side of caution and automatically grant access to an interpreter. However magnanimous this may appear, it sometimes constitutes an inefficient use of scarce resources. It is hard to decide which is better, the judge who thinks he is linguistically alert or the one who has little interest in the question. Sometimes one hears judges saying things such as "Do you mean to tell me you're living here 15 years and don't understand English ?" Or, if the defendant appears to answer a question before it has been

fully interpreted, a triumphant "I thought you claimed you didn't understand English. I think you do." In one case the Prosecutor alleged that the defendant might be committing perjury in claiming he didn't speak English. Some judges give a cursory exam to see if the defendant understands English. But what is the threshold of proficiency in English that a person should possess before being expected to function effectively in a courtroom ? This is probably a very complicated question, one which the judge may not be as qualified to answer as he thinks. Even a normally competent speaker can deteriorate under the stress of courtroom appearance, with obvious effects on the linguistic quality of his testimony. In the light of the recent focus on language proficiency, I consider that there is an opportunity for theorists and practitioners of language testing to direct their thoughts to real-world questions such as this.

References

Briere, Eugene. 1978. Limited English speakers and the Miranda Rights. TESOL Quarterly, 12:235-46.

Charrow, Veda, and Robert Charrow. 1979. Characteristics of the language of jury instructions, in J.E. Alatis and G.R. Tuckers eds. Language and Life, Washington D.C: Georgetown University Press, 163-85.

Final Report of the New Jersey Supreme Court Task Force on Interpreter and Translation Services 1985.